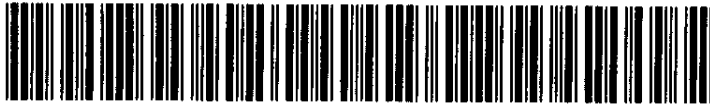


USDC SCAN INDEX SHEET



BAR 7/20/99 15:13

3:99-CV-01485 MONTENENGRO V. ADMONT INC MONEY

\*1\*

\*CMP.\*

SEAN T. O'BRYAN (State Bar No. 116065)  
Attorney at Law  
701 "B" Street, Suite 1050  
San Diego, California 92101-8103  
Telephone (619) 231-3479

Attorney for Plaintiffs

FILED

99 JUL 19 PM 3:46

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: [Signature] DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'99cv 1485TW LSP

ALEJANDRO MONTENENGRO, )  
HUMBERTO HERRERA, ELIZABETH )  
RODRIGUEZ, JUAN VALDOVINOS, MARIA )  
HERNANDEZ, URBANO RUANO, JOSE )  
PRIEGO, JOSE OSEGUERA, MARIA C. )  
SALCIDO, ANTONIO SOTO, MARIA SOTO, )  
GREGORIA TEJEDA, GRACIELA BRITO, )  
ARTURO RODRIGUEZ, RUTH ANN TEJEDA, )  
INEZ DIAZ TORRES, HERLINDA M. CRUZ, )  
GUSTAVO CORTEZ, ALFONSO CORTEZ, ABEL )  
BRITO, SILVANO BRITO, JAVIER RANGEL, )  
LYDIA RANGE, ZEFRINO MONTENEGRO, )  
MARIA MONTENEGRO, ANA ROSA )  
FERNANDEZ, MIGUEL MARTEL, AGUSTIN )  
MATA, JOSE MATA, LOURDES MEJORADO, )  
SAUL MONTELONGO, ISMAEL MONTENEGRO, )  
CRISTELA MORA, CRISTELA GARCIA, )  
ANTONIO BARAJAS, FRANCISCO BARAJAS, )  
ROGUE CARO, JOSEFINA CELAYA, )  
ANTONIO JOSE SERNA, ISMAEL CONDE, )  
JORGE V. GALLEGOS, LEONOR ALVARADO, )  
ROSA ACUNA, JAVIER ACUNA, JOSEPH )  
ARENAS, ESTHER AYALA, DOMINGO )  
CHAVEZ, MARTHA P. BAEZ, PATRICIA )  
PEREZ, MIGUEL ACEVEDO, REGLA TEJEDA, )  
RAFAEL GUTIERREZ, CRUZ E. LOPEZ, )  
FRANCISCO CHAVEZ, RAMON OSEGUERA, )  
ANTONIO GARCIA, JESUS L. GARCIA, )  
VICTOR GONZALEZ, MARIA R. LOPEZ, )  
HECTOR M. LOPEZ, ANTONIO ZARAGOZA, )  
JOSE HERNANDEZ, AND JOSE GUTIERREZ, )

Plaintiffs,

v.

1 ADMONT INC. MONEY PURCHASE PENSION )  
 2 PLAN; ADMONT INC. PROFIT SHARING )  
 3 PLAN; PAT COCHRANE, Trustee of the )  
 4 Admont Inc. Money Purchase Pension )  
 Plan and Trustee of the Admont Inc. )  
 Profit Sharing Plan; MERRILL, LYNCH, )  
 PIERCE, FENNER, & SMITH, INC., )  
 5 )  
 Defendants. )  
 6 )

7 FIRST CLAIM  
 (Breach of Fiduciary Duty - 29 U.S.C. § 1109  
 8 Violation of ERISA - 29 U.S.C. §1132 (a))

9 1. Defendant ADMONT INC. MONEY PURCHASE PENSION PLAN  
 10 and Defendant ADMONT INC. PROFIT SHARING PLAN are employee  
 11 benefit plans within the meaning of 29 U.S.C. §1132. These  
 12 Defendants will be referred to herein collectively as "the  
 13 Plans."

14 2. Defendant PATRICK COCHRANE is, and was at all  
 15 times herein mentioned, the trustee of the Plans  
 16 and a fiduciary of the Plans within the meaning of 29 U.S.C.  
 17 §1102 (a).

18 3. Defendant MERRIL, LYNCH, PIERCE, FENNER, & SMITH,  
 19 INC., is the entity which is now in control of the funds of  
 20 the Plans. Its office located at 111 W. Ocean Blvd. 24th Floor  
 21 Long Beach, CA is handling the accounts of the Plans.

22 4. Plaintiffs, ALEJANDRO MONTENENGRO, HUMBERTO HERRERA,  
 23 ELIZABETH RODRIGUEZ, JUAN VALDOVINOS, MARIA HERNANDEZ, URBANO  
 24 RUANO, JOSE PRIEGO, JOSE OSEGUERA, MARIA C. SALCIDO, ANTONIO  
 25 SOTO, MARIA SOTO, GREGORIA TEJEDA, GRACIELA BRITO, ARTURO  
 26 RODRIGUEZ, RUTH ANN TEJEDA, INEZ DIAZ TORRES, HERLINDA M.  
 27 CRUZ, GUSTAVO CORTEZ, ALFONSO CORTEZ, ABEL BRITO, SILVANO  
 28 BRITO, JAVIER RANGEL, LYDIA RANGEL, ZEFRINO MONTENEGRO,  
 MARIA MONTENEGRO, ANA ROSA FERNANDEZ, MIGUEL MARTEL, AGUSTIN

1 MATA, JOSE MATA, LOURDES MEJORADO, SAUL MONTELONGO, ISMAEL  
2 MONTENEGRO, CRISTELA MORA, CRISTELA GARCIA, ANTONIO BARAJAS,  
3 FRANCISCO BARAJAS, ROGUE CARO, JOSEFINA CELAYA, ANTONIO JOSE  
4 SERNA, ISMAEL CONDE, JORGE V. GALLEGOS, LEONOR ALVARADO,  
5 ROSA ACUNA, JAVIER ACUNA, JOSEPH ARENAS, ESTHER AYALA, DOMINGO  
6 CHAVEZ, MARTHA P. BAEZ, PATRICIA PEREZ, MIGUEL ACEVEDO, REGLA  
7 TEJEDA, RAFAEL GUTIERREZ, CRUZ E. LOPEZ, FRANCISCO CHAVEZ,  
8 RAMON OSEGUERA, ANTONIO GARCIA, JESUS L. GARCIA, VICTOR  
9 GONZALEZ, MARIA R. LOPEZ, HECTOR M. LOPEZ, ANTONIO ZARAGOZA,  
10 JOSE HERNANDEZ, AND JOSE GUTIERREZ are participants in the  
11 Plans. Plaintiff Alejandro Montenegro resides in San Diego  
12 County, CA.

13 5. This court has federal question jurisdiction over  
14 this matter pursuant to 29 U.S.C. §1331 and 29 U.S.C.  
15 §1132 (e). Venue is proper in this district because several  
16 plaintiffs reside in San Diego County, CA.

17 6. Admont Inc., which formerly employed the Plaintiffs,  
18 ceased operating in or about 1993. The Plans have continued  
19 to exist since that time. In 1998 and thereafter Plaintiffs  
20 demanded that their interests in the Plans be distributed to  
21 them pursuant to the terms of the Plans which permit  
22 lump sum distributions. Defendant PAT COCHRANE, in violation  
23 of his fiduciary duty to Plaintiffs and to the Plans, has  
24 refused to cause Plaintiffs' interests in the Plans to be  
25 distributed to Plaintiffs and has refused to direct Defendant  
26 MERRIL, LYNCH, PIERCE, FENNER & SMITH, INC. to distribute  
27 Plaintiffs' interests in the Plans to Plaintiffs. Plaintiffs  
28 have attempted administrative resolution of this matter

1 which has been futile in that Defendant PAT COCHRANE has  
2 refused to communicate with Plaintiffs, or Plaintiffs'  
3 attorneys, and has done nothing to comply with Plaintiffs'  
4 requests. Pursuant to the terms of the Plans, Plaintiffs  
5 have a right to a lump sum distribution of their interests in  
6 the Plans. Plaintiffs are informed and believe and thereon  
7 allege Defendant PAT COCHRANE has caused money out of the  
8 Plans to be loaned to Defendant PAT COCHRANE which money has  
9 not been paid back to the Plans. The conduct of Defendant PAT  
10 COCHRANE alleged herein is in breach of his fiduciary duties  
11 under 29 U.S.C. §1104 and 29 U.S.C. §1109 and is in  
12 violation of Plaintiffs' rights under 29 U.S.C. §1132.

13 7. The conduct of Defendants PAT COCHRANE and the  
14 Plans alleged herein has legally caused Plaintiffs to  
15 not recieve their interests in the Plans all to their  
16 damage in an amount to be proved. The conduct of  
17 Defendants PAT COCHRANE and the Plans has caused Plaintiffs to  
18 lose interest on their interests in the Plans from the  
19 date those amounts should have been distributed to  
20 Plaintiffs until those amounts are distributed.  
21 The conduct of Defendants PAT COCHRANE and the Plans  
22 have further caused Plaintiffs to incur attorney's  
23 fees and expenses and will caused Plaintiffs to incur  
24 attorney's fees and expenses in the future all to their  
25 damage in an amount to be proved and which are claimed  
26 pursuant to 29 U.S.C. §1132 (g) and the terms of the Plans.

27 8. Defendant MERRILL, LYNCH, PIERCE, FENNER & SMITH,  
28 INC. currently has custody of the funds of the Plans which

1 Plaintiffs are informed and believe, and thereon allege,  
2 are invested in money market accounts. Pursuant to  
3 29 U.S.C. §1132 and 29 U.S.C. §1109, Plaintiffs request  
4 Defendants PAT COCHRANE and MERRILL, LYNCH, PIERCE, FENNER  
5 & SMITH, INC. be ordered to prepare an accounting of  
6 Plaintiffs' interests in the Plans, be ordered to retain  
7 custody of Plaintiffs interests in the Plans until this  
8 matter is resolved and their rights are clarified, and to  
9 cause these interests to be distributed to Plaintiffs.

10 Plaintiffs further request that before this accounting  
11 is done, that Defendant PAT COCHRANE be ordered to pay back  
12 the loan he received from the Plans with all interest owed  
13 so that that amount may be included in the distributions  
14 to be made to Plaintiffs.

15 WHEREFORE, Plaintiffs pray as follows:

16 Against Defendants PAT COCHRANE and the Plans;

- 17 1. For compensatory damages according to proof;  
18 2. For interest;  
19 3. For attorney's fees and expenses;

20 4. For an order requiring Defendant PAT COCHRANE  
21 and the Plans to execute all documents necessary to cause  
22 the transfer of Plaintiffs' interests in the Plans to  
23 Plaintiffs;

24 5. For costs of suit;

25 6. For such other and further relief as the court  
26 deems proper;

27 Against Defendants PAT COCHRANE and MERRIL, LYNCH,  
28 PIERCE, FENNER & SMITH, INC.

1           1. For an order directing these Defendants not to  
2 distribute any of Plaintiffs' interests in the Plans  
3 or therwise diminish those interests until this matter is  
4 resolved;

5           2. For an order requiring these Defendants to prepare an  
6 accounting of Plaintiffs' interests in the Plans;

7           3. For an order requiring that Defendant PAT COCHRANE'S  
8 loan and interest owed thereon be deposited into the account  
9 of the Plans with MERRIL, LYNCH, PIERCE, FENNER & SMITH, INC.  
10 before the accounting of Plaintiffs' interests in the Plans  
11 are done and before the requested distributions are made;

12           4. For an order requiring these Defendants cause  
13 Plaintiffs interests in the Plans to be distributed to them;

14           5. For such other and further relief as the court  
15 may deem proper.

16  
17 Dated: 7/19/99

Sean T. O'Bryan  
Sean T. O'Bryan, Attorney  
for Plaintiffs

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JS 14  
(Rev. 3)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS***ALEXANDRO MONTENEGRO et al.***DEFENDANTS***ADAMONTA, MONTE  
PURCHASE THE ADMINISTRATIVE PLANET*(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT ORANGE  
(IN U.S. PLAINTIFF CASES ONLY) **DEPUTY**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**99cv 1485TW LSP****(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)***SETH T. O'BRYEN  
701 B STREET, 54121051  
SAN DIEGO, CA 92101  
(619) 231-3474***ATTORNEYS (IF KNOWN)****II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 999 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS — Third Party 26 USC 7809

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

*29 U.S.C. 1132***VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐DEMAND \$ *2000*

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

*7/19/99**Seth T. O'Brien*

FOR OFFICE USE ONLY

RECEIPT #

*51106*

AMOUNT

*150 —*

APPLYING IFP

JUDGE

MAG. JUDGE